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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 MAUDO FOFANA,

12 Plaintiff,

13 v.

14 WARDEN NWDC, *et al*,

15 Defendants.
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Case No. C09-5344BHS-KLS

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED *IN*
FORMA PAUPERIS

Noted for August 14, 2009

20 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
21 636(b)(1) and Local MJR 3 and 4. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983 and
22 an application to proceed *in forma pauperis*. To file a complaint and initiate legal proceedings, plaintiff
23 must pay a filing fee of \$350.00 or file a proper application to proceed *in forma pauperis*. Because
24 plaintiff appears to have sufficient funds with which to pay the \$350.00 Court filing fee, the undersigned
25 recommends the Court deny his application.

26 DISCUSSION

27 The Court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper
28 affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an

1 application to proceed *in forma pauperis*. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*,
2 375 U.S. 845 (1963). Denial of *in forma pauperis* status is not unreasonable when a litigant is able to pay
3 the initial expenses required to commence a lawsuit. See Temple v. Ellerthorpe, 586 F.Supp. 848 (D.R.I.
4 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v. Com. of Pa., 407 F.Supp.
5 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir.
6 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

7 By requesting the court to proceed *in forma pauperis*, plaintiff, a detainee at the federal Northwest
8 Detention Center, located in Tacoma, Washington, is asking the government to incur the Court filing fee
9 because he allegedly is unable to afford the costs necessary to proceed with his civil rights action. In his
10 application to proceed *in forma pauperis*, plaintiff indicates that during the twelve months proceeding his
11 filing thereof, he had not received any money. The “Account Activity Ledger” plaintiff submitted with
12 his application, though, shows that from between January 27, 2009, and June 2, 2009, he received 10
13 deposits for a total of \$676.00, and that as of June 23, 2009, he had an account balance of \$812.39.

14 Although it is not clear from what source(s) plaintiff his receiving the above funds, it is clear that
15 he has received an average of \$135.00 a month over the five months immediately preceding the filing of
16 his application – with no indication that such receipt will not continue in the near future – and that he has
17 more than enough funds in his account – more than \$800.00 at this time – to pay the \$350.00 Court filing
18 fee. Further, given the fact that a detainee’s basic needs are provided for while detained at the NWDC, it
19 certainly is not unreasonable to expect plaintiff to pay the Court filing fee from those funds.

20 CONCLUSION

21 Because it is reasonable to expect plaintiff to incur the costs to proceed with this action, the
22 undersigned recommends the Court dismiss his complaint unless he pays the required \$350.00 filing fee
23 **within thirty (30) days** of the Court’s order.

24 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) 72(b),
25 the parties shall have ten (10) days from service of this Report and Recommendation to file written
26 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
27 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
28 imposed by Fed. R. Civ. P. 72(b), the Clerk is directed to set this matter for consideration on **August 14,**

1 2009, as noted in the caption.

2 Dated this 16th day of July, 2009.

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6 Karen L. Strombom
7 United States Magistrate Judge
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